

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, DECEMBER 3, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, DECEMBER 2, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT EMERGENCY LOCAL RULE 10.28.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

1. S-CV-0038834 SMITH, TIMOTHY v. MOTTINI, PHILLIP

Plaintiff Timothy Smith's Motion to Compel Production of Bank Records

Plaintiff Timothy Smith's motion to compel production of bank records is denied as to non-party Phillip Mottini. In this request, plaintiff seeks to compel nearly thirteen years of bank records from non-parties Phillip Mottini and Smith-Mottini Financial Advisors, Inc. It appears from the briefing that the objections to the subpoena of corporate records for Smith-Mottini Financial Advisors, Inc. has been withdrawn, so the court will only address the request as it pertains to the individual records of Mr. Mottini. Plaintiff asserts he needs the records to conduct a forensic accounting in order to determine whether defendant Daniel Leman breached his duties while preparing accountings and tax records for Mr. Mottini. The request is overly broad, seeking "any and all information regarding bank records pertaining to any bank account statements, checks and deposits concerning the checking accounts of Phillip Mottini including, but not limited to, account number xxxxxxxx from 01/01/2007 to and

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

including 12/31/2019.” The subpoena – seeking some 13 years of records – is too broad and without a reasonable showing as to why such an expansive request is necessary. Accordingly, the court declines to enforce this subpoena of personal records.

2. S-CV-0042598 DRYSDALE, ANDREW v. CLAYTON, KEITH

Defendant Keith Clayton’s Motion to Compel Further Responses to Discovery and Sanctions

The motion is granted in part. As to the fourth document demand, plaintiff Andrew Drysdale shall provide further verified responses and responsive documents, without further objections, to RPD no. 155. The request is denied as to RPD nos. 173, 174, 175, 178, 182, 183, and 184.

As to the second set of special interrogatories, plaintiff Andrew Drysdale shall provide further verified responses, without further objections, to special interrogatories nos. 32 and 34. The request is denied as to special interrogatories nos. 28 and 30.

As to the second set of request for admissions, the request is denied in light of plaintiff’s representation that he will be providing second supplemental responses to RFAs nos. 59, 6, 63, 64, 65, 66, 67, and 68.

The request for sanctions is denied as plaintiff did not oppose the motion and made representations he would be providing further supplemental responses. Further, defendant was not entirely successful in bringing the motion.

3. S-CV-0042984 SELTER, PAMELA v. JAMES, KELLY

Defendants’ County of Placer and Placer County In-Home Supportive Services Public Authority’s Motion for Summary Judgment or in the Alternative Summary Adjudication of Issues

Preliminary Matters

As an initial matter, the court vacates the ruling entered on November 19, 2020. The clerk’s office inadvertently scheduled two separate motions for summary judgment/summary adjudication when, in fact, there was only the single motion pending before the court.

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.**

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Plaintiff's request for judicial notice is granted as to the statutory sections. Defendants' objection to the excerpts from the California Secretary of State California Roster 2020 is sustained and the court denies judicial notice of these excerpts.

Ruling on Objections

Plaintiff's objections nos. 1, 2, 3, and 4 are sustained as the statements are not facts but legal conclusions. The court, however, does not sustain any objections to the evidence cited therein.

Ruling on Motion

The motion is granted. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure section 437c(c).) The moving party bears the initial burden of establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (Id. at 437c(p)(2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (Ibid.) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The court reviews the motion keeping this in mind.

Defendants have met their initial burden here. Placer County has made a sufficient showing that statutory immunity bars the negligence claim alleged against it. Plaintiff Bruce Selter was involved in a vehicle collision with defendant Kelly James on September 18, 2018. (Defendants' SSUMF No. 1.) Ms. James was acting as an in-home support services provider for defendant Mary Butler at the time of the collision. (Id. at Nos. 1-4.) Welfare & Institutions Code section 12301.6(f)(3) states that "[c]ounties and the state shall be immune from any liability resulting from their implementation ... in the administration of the In-Home Supportive Services program Any obligation of the public

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

authority or the consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.”

Placer County IHSS has also made a sufficient showing that it is not an employer for the purposes of plaintiff’s negligence claim. To reiterate, the collision between plaintiff and Ms. James took place while Ms. James was acting as an in-home support services provider for Ms. Butler. (Defendants’ SSUMF Nos. 1-4.) Welfare & Institutions section 12301.6(f)(1) states “[a]ny nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed *not to be the employer of in-home supportive services personnel* or waiver personal care services personnel referred to recipients under this section for purposes of liability *due to the negligence or intentional torts of the in-home supportive services personnel* or waiver personal care services personnel.” [Emphasis added.] Placer County IHSS has met its initial burden by showing it owed no duty to plaintiff since Placer County IHSS is not an employer for the purposes of plaintiff’s negligence claim. This shifts the burden to plaintiff to establish a triable issue of material fact as to both defendants.

Plaintiff, however, has failed to establish a triable issue. Plaintiff contends the deposition testimony of Patrice Melusky establishes that IHSS providers are county employees. (Plaintiff’s Responsive SSUMF no. 10.) A review of the testimony does not bear this out. Ms. Melusky does state in her deposition testimony that IHSS employees are county employees. (Melusky deposition p. 30:5-7.) However, Ms. Melusky specifically differentiates those employed by the public authority from IHSS providers stating, “Everybody that I know of *that deals with recipients and providers* are Placer County employees.” (Ibid.) Her testimony expressly excludes IHSS recipients and IHSS providers from what is considered a public authority employee or county employee. The remainder of the purported facts do not give rise to a triable issue regarding plaintiff’s single cause of action for negligence involving a motor vehicle collision. (see generally Plaintiff’s Responsive SSUMF.) Plaintiff presents facts supposedly related to a theory of negligent hiring and/or training, which is not pleaded in the complaint. This goes beyond the scope of the current summary judgment motion, which is bound by the allegations actually pleaded in the operative pleading. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) Plaintiff does not provide sufficient evidence to create a triable issue of material fact. For these reasons, the motion is granted.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

4. S-CV-0043196 LASCOE, PAMELA v. AMAZING FACTS INT'L

Defendant's Motion to Compel Further Responses to Employment Form Interrogatories

Ruling on Motion

Defendant seeks further responses to employment form interrogatories. As a result of multiple extensions of time to respond to the interrogatories, the interrogatories at issue had been pending for approximately eight months before ultimately culminating in this motion.

As an initial matter, plaintiff contends the motion is untimely. Plaintiff asserts the final extension of time granted to defendant to file a motion to compel was October 30, 2020. In fact, the motion and all of its supporting papers were filed on October 30, 2020. However, from plaintiff's perspective, the motion should be considered untimely because it was not *served* until several days later, on November 2, 2020. The motion was set for hearing on December 3, 2020, still affording plaintiff ample opportunity to file an opposition to the motion, which plaintiff did on November 19, 2020. Code of Civil Procedure section 2024.060 specifically permits the kind of agreement to extend time to file that occurred here. The section provides that parties to an action may enter into an agreement to extend the time for the completion of discovery proceedings or for the hearing of motions concerning discovery. The "agreement may be informal, but it shall be confirmed in a writing that specifies the extended date." The court has reviewed the relevant portions of the lengthy e-mail chain between counsel concerning the extension of time to file a motion to compel. Both parties refer to their understanding that the extension of time relates to the *filing* of a motion to compel. There are no express limitations or qualifications with respect to the service of the motion – and certainly no express agreement or understanding that the motion had to be simultaneously filed and *served*. The informal writing between the parties in the form of emails extended the time to *file* a motion to compel, and the court sees no reason to insert an additional term to the express agreement reached by counsel. Plaintiff cites *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, for the proposition that a motion to compel is not "made" until it and its supporting papers are served and, therefore, this motion must be considered untimely. Unlike *Weinstein*, however, in this case all of the moving papers were filed together and on time in light of the agreed filing date of October 30, 2020 and, further, plaintiff's ability to respond was in no way negatively impacted. The motion is timely.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

Turning to the substance of the motion, the motion is granted. Plaintiff shall provide further verified responses, without further objections, to employment form interrogatories nos. 200.1, 200.3, 202.1, 204.1, 204.2, 204.3, 204.4, 204.6, 205.1, 207.2, 210.2, 210.3, 210.4, 212.3, 212.4, 212.5, 212.7, 213.1, 213.2, and 214.1.

The court notes that this motion and opposition carry with it many of the negative attributes of discovery motion practice. For instance, it appears that the many emails between counsel over the course of many months may have been designed for the singular purpose of being attached to a potential motion to compel – instead of representing honest attempts to resolve discovery issues. Nonetheless, both parties appear insistent on claiming the only high ground for engaging in good faith and neither side seemingly misses an opportunity to harshly characterize the conduct of the other. As a judicial tip, the mudslinging and adjectives used here do not aid the court whatever in determining the merits of the motion. Further, the court stands in awe that a dispute over further answers to 20 form interrogatories would require moving papers totaling almost 300 pages and an opposing declaration with over 250 pages of exhibits. And neither side is shy about requesting sanctions in connection with this motion. Defendant seeks a total of \$9,060 for fees and costs. Plaintiff states it had two lawyers and their staff work on the opposition to the motion and contends it is thus entitled to sanctions totaling \$8,250.

The court finds defendant is entitled to sanctions of \$3,500 in attorneys' fees, representing 10 hours at \$350 per hour, together with the filing cost of the motion. Plaintiff's request for sanctions is denied.

5. S-CV-0043468 SIMPSON, MELODY v. BANK OF NY MELLON

The motion to compel further discovery is continued to Thursday, January 7, 2021 at 8:30 a.m. in Department 42 pursuant to the stipulation and order entered on December 1, 2020.

6. S-CV-0043589 ACHSTEIN, STEVEN v. MERCEDES-BENZ

The motion to compel expert witness deposition is dropped from the calendar. A notice of settlement of the entire action was filed on November 30, 2020.

//

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

7. S-CV-0043612 JMK GOLF v. ALESSI, BETSEY

The two motions for attorneys' fees are continued to Friday, January 8, 2021 at 8:30 a.m. in Department 3, located at the Historic Auburn Courthouse, to be heard by the Honorable Michael W. Jones.

8. S-CV-0043998 DHESI, HARRY v. GARCIA, MARY

Defendant Mary Garcia's Demurrer to the First Amended Complaint (FAC)

The demurrer is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) In the current request, defendant Mary Garcia challenges the sufficiency of the allegations in all five causes of action. A review of the FAC supports her challenge.

The first cause of action asserts a claim for breach of contract. The allegations, however, are inconsistent. Plaintiff alleges the parties entered into an oral contract while attaching an exhibit that purports to be written terms of the contract between the parties. Plaintiff goes on to allege various breaches to the contract yet goes on to allege a modification in the terms of the contract, which directly conflicts with plaintiff's prior allegations of breach. The culmination of these inconsistent allegations results in an overall failure to plead clear terms of an underlying contract; any breach of said contract; or any damages related to breach.

The second cause of action alleges a breach of the implied covenant. This claim requires the existence of a valid contract between the parties and cannot create covenants that extend beyond the terms of the contemplated contract. (*Racine & Laramie v. Department of Parks and Recreation* (1992) 11 Cal.App.4th 1026, 1031-32.) As previously discussed, plaintiff fails to sufficient allege the elements of a contract. Plaintiff also includes additional claims of breach that appear beyond the scope of the purported contract between the parties.

The third cause of action asserts a claim for fraud. Fraud must be specifically pled, with facts stating how, when, where, to whom and by what means any misrepresentations were made to a plaintiff. (*Lazar v. Superior Court* (1996)

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

12 Cal.4th 631, 645.) The FAC does not plead the level of specificity to support a fraud claim. Furthermore, plaintiff's allegations of fraud are contradicted by his prior allegations that the parties modified the contract to allow defendant's family members to reside on the property. These inconsistent and deficient allegations fail to support the fraud claim.

The fourth cause of action alleges a claim for waste, which must plead a duty to preserve and protect the subject property. (*Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel* (2011) 192 Cal.App.4th 1183.) To reiterate, plaintiff has not sufficiently alleged a contract between the parties, which in turn means plaintiff fails to sufficiently allege a duty on the part of defendant to preserve and protect the property.

The final cause of action asserts a claim for conversion. This type of claim requires plaintiff to plead (1) plaintiff's ownership or right to possession of property, (2) defendant's wrongful act toward or disposition of the property, interfering with plaintiff's possession, and (3) damages to the plaintiff. (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395.) Plaintiff's allegations fall short of identifying ownership of the property; defendant's wrongful acts interfering with plaintiff's possession; or damages. Since all five of the causes of action are deficiently pleaded, the demurrer is sustained in its entirety.

The second amended complaint shall be filed and served by January 4, 2021.

Defendants Elystina Garcia, Ilidio Garcia, and James Taylor's Demurrer to the First Amended Complaint (FAC)

The demurrer is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) In this instance, the defendants challenge the sufficiency of the fourth cause of action for waste and the fifth cause of action for conversion.

The fourth cause of action alleges a claim for waste, which must plead a duty to preserve and protect the subject property. (*Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel* (2011) 192 Cal.App.4th 1183.) Plaintiff does not

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

sufficiently allege how these defendants, who were not parties to the purported contract, would have a duty to preserve and protect the subject property. This is especially true regarding the minor children.

The fifth cause of action asserts a claim for conversion. This type of claim requires plaintiff to plead (1) plaintiff's ownership or right to possession of property, (2) defendant's wrongful act toward or disposition of the property, interfering with plaintiff's possession, and (3) damages to the plaintiff. (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395.) Plaintiff does not sufficiently identify ownership of property or these defendants' wrongful acts interfering with ownership. Plaintiff also does not sufficiently allege damages. Both causes of action are deficiently pleaded. The demurrer is sustained as to the fourth and fifth causes of action with leave to amend.

The second amended complaint shall be filed and served by January 4, 2021.

9. S-CV-0044290 CLARK'S CORNER INVEST v. JLM FINANCIAL

Defendant Farid Dibachi's Motion for Reconsideration

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Plaintiff's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is denied. A motion for reconsideration requires a showing of new or different facts, circumstances, or law along with a satisfactory explanation as to why the evidence was not presented at an earlier time. (Code of Civil Procedure section 1008; *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255.) Defendant has failed to make such a showing. First, defendant has not made a sufficient showing of new or different facts, circumstances, or law as it pertains to his claims regarding lack of due process. There is no new or different evidence presented that could not have been presented at the time of the original hearing on defendant's motion to vacate the sister-state judgment. Second, there

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

are no new or different facts, circumstances, or law presented regarding defendant's claims of fraud, concealment, or breach of fiduciary duty. Most of the arguments and evidence presented are primarily a reassertion of claims made during the initial challenge to the sister-state judgment. Third, the denial of defendant's motion in the New York court does not constitute a new or different fact supporting reconsideration. The New York court expressly denied defendant's challenge to the underlying judgment of confession, so the underlying judgment for the current sister-state judgment stands. Finally, defendant's filing of a new civil action challenging the underlying New York judgment does not amount to new or different facts, circumstances, or law that would support reconsideration. The mere filing of a new action challenging the underlying judgment does not, in and of itself, create a new fact or circumstance. Since defendant has not made a sufficient showing of new or different facts, circumstances, or law to support the request, the motion is denied.

10. S-CV-0044822 WALLACE, JONATHAN v. TOP SHELF MOTORS

The motion to compel arbitration is dropped from the calendar. A stipulation and order to stay case pending arbitration was entered on November 9, 2020.

11. S-CV-0044985 LOR, CHA v. DUENAS, AMI

Defendant Ami Duenas' Motion to Strike Punitive Damages

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted as to Exhibits A, B, and C under Evidence Code section 452. Plaintiff's objections to Exhibit D are sustained and defendant's request is denied as to Exhibit D.

Ruling on Motion

In the current request, defendant once again challenges the sufficiency of punitive damages allegations within the first amended complaint. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading or to strike a pleading not drawn in conformity with the law. (Code of Civil Procedure section 436(a), (b).) In order to claim punitive damages, a plaintiff must allege facts that a defendant is guilty of oppression, fraud, or malice. (Civil Code section 3294.) A review of the language in the FAC shows that the allegations remain insufficient to support punitive damages. The complaint

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

alleges two causes of action based on negligence. The allegations within these two claims do not allege any fraudulent actions on the part of defendant. Thus, fraud is not a basis for punitive damages in light of the allegations within the FAC.

This leaves oppression or malice as a basis for punitive damages. Malice requires conduct where a defendant intends to cause injury to plaintiff or defendant's despicable conduct was carried out with a willful and conscious disregard for the rights and safety of others. (Civil Code section 3294(c)(1).) The allegations that defendant intentionally ran a red light in a busy intersection fall short of alleging intentional actions on the part of defendant to cause injury. These allegations are also insufficient to allege despicable conduct that would support malice for the purposes of punitive damages.

Oppressive conduct refers to despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (Civil Code section 3294(c)(2).) Conclusory statements in a pleading are insufficient when seeking punitive damages. (*Brousseau v. Jarrett* (1997) 73 Cal.App.3d 864, 872.) Again, allegations that defendant intentionally ran a red light in a busy intersection are not sufficient to support despicable conduct. Nor are these allegations sufficient enough to show cruel and unjust hardship on plaintiff. Since the FAC still fails to sufficiently allege a basis to support punitive damages, the motion is granted.

The final issue to address is whether leave to amend should be granted. The court takes note that this is plaintiffs' second attempt to plead a claim supporting punitive damages. The complaint continues to suffer from the deficiencies discussed above despite plaintiff being afforded the opportunity to amend. Plaintiffs' opposition does not address whether plaintiffs' seek leave to amend in the event the motion is granted. It is the plaintiffs who bear the burden of demonstrating how their FAC may be further amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) Plaintiffs have made no such showing. For these reasons, the motion is granted without further leave to amend.

///

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

12. S-CV-0045128 CANNADY, JERIMIAH v. WALKER, JOSHUA

The Sterling Law Group's Motion to be Relieved as Counsel

The Sterling Law Group, Stephen Slocum, and Timothy Kooy's motion to be relieved as counsel for plaintiff Jerimiah Cannady is granted. (Code of Civil Procedure section 284(2); California Rules of Court, Rule 3.1362.) They shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon plaintiff Jerimiah Cannady.

13. S-PR-0009452 IN RE REED FAM LIV TRUST

The Christian Broadcasting Network, Inc.'s (CBN's) Motion to Disqualify the Sinclair Wilson Baldo & Chamberlain (SWBC) Firm

Preliminary Matters

As an initial matter, the court declines to consider the supplemental declaration of Danielle Diebert filed in conjunction with the reply papers as SWBC and Mr. Sween have not had an opportunity to review and respond to this evidence. (*Alliant Ins. Services, Inc. v. Gaddy* (2009) 159 Cal.App.4th 1292, 1307-1308.)

Ruling on Request for Judicial Notice

CBN's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is denied. The power of the court to order the disqualification of counsel is statutory. "Every court shall have the power to do all of the following: [¶] ... [¶] (5) [t]o control in furtherance of justice, the conduct of its ministerial officers, and all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." (Code of Civil Procedure section 128(a)(5).) "Code of Civil Procedure section 128, subdivision (a)(5) gives courts the power to order a lawyer's disqualification." (*DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 831-832.) A disqualification motion addresses a conflict between a party's right to choose its counsel and the overall needs of the judicial system to maintain ethical standards of professional responsibility for attorneys. (*Comden v. Superior Court* (1978) 20 Cal.3d 906, 915; *Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135,

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR DECEMBER 3, 2020 AT 8:30 A.M.

1145.) “The paramount concern must be to preserve public trust in the scrupulous administration of justice and integrity of the bar. The important right to counsel of one’s choice must yield to ethical considerations that affect the fundamental principles of our judicial process.” (*Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th at p. 1145.)

In the current motion, CBN seeks to disqualify the Sinclair Wilson Baldo & Chamberlain firm (SWBC) from further representation of the former trustee Derek Sweem. First, CBN asserts SWBC’s association as counsel for Mr. Sweem, while Mr. Sweem was serving as trustee, creates an adverse representation to CBN who is now successor trustee. Essentially, CBN argues SWBC represented the trust rather than Mr. Sweem as trustee, so the firm’s continued representation of Mr. Sweem is improper. This contention is incorrect. A trustee acts in a fiduciary capacity with respect to property within the trust, thusly, the client is the trustee and not the trust. (*Borissoff v. Taylor & Faust* (2004) 33 Cal.4th 523, 529.) There is no attorney-client relationship between CBN and SWBC created by the mere fact SWBC associated as counsel for Mr. Sweem. Nor has CBN made a sufficient showing SWBC obtained confidential information regarding the trust during its association as counsel for Mr. Sweem. To the contrary, SWBC submits evidence showing its contact with Mr. Sweem during this period of time was limited to a single telephonic appearance with the association of counsel beginning on May 26, 2020 and ending on June 5, 2020. (Wilson declaration ¶9.)

CBN also contends SWBC is subject to vicarious disqualification since Mr. Sweem’s prior counsel, Meissner Joseph Palley & Ruggles (MJPR), ultimately substituted out the case due to a conflict of interest. The rule of vicarious disqualification generally applies to attorneys within the same law firm as the firm is imputed with knowledge of confidential information. (*In re Charlissee C.* (2008) 45 Cal.4th 145, 161.) Here, CBN seeks to extend this liability outside of the MJPR firm to SWBC. CBN, however, has not made a sufficient showing to support vicarious disqualification. To reiterate, SWBC’s association as counsel for Mr. Sweem was limited to providing a single telephonic appearance. (Wilson declaration ¶9.) Further, the association of counsel lasted only 10 days. (*Ibid.*) There is insufficient evidence presented to the court that would substantiate imputing confidential knowledge to SWBC to warrant vicarious disqualification. CBN has failed to make a sufficient showing to warrant disqualification of the SWBC firm. For these reasons, the motion is denied.